

REMARKS

The Examiner has rejected all claims either under 35 U.S.C. §102(e) as being anticipated by Van Horn et al. (U.S. Patent No. 6,604,089) or under 35 U.S.C. §103(a) as being unpatentable over Van Horn in combination with Egghead (web page of Egghead.com) and/or Geiger (U.S. Patent No. 6,434,536). Applicants respectfully request that the Examiner reconsider these rejections in light of the below Remarks.

Applicants' full and detailed arguments against the rejections are set forth in the Response to Official Action mailed on January 22, 2004. Presented herein is a brief summary of those arguments and Applicant's comments concerning to the "Response to Arguments" section of the Office Action mailed March 29, 2004.

Claim 1, the only pending independent claim, requires, among other limitations: (1) that the system permits a buyer to request an immediate purchase at an immediate purchase price and that a sale is unconditionally consummated at the immediate purchase price as soon as the user requests the immediate purchase at the immediate purchase price; and (2) that the system permits a buyer to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price and that a sale is unconditionally consummated at the user defined deferred purchase price as soon as the user-

defined deferred purchase price matches the decreased immediate purchase price. This is completely different than what is disclosed in the prior art.

Van Horn discloses a system in which an online buying group (referred to therein as a "co-op") is formed for the specific purpose of purchasing a particular product by defining a start time, end time, critical mass, any minimum number of units offered, any maximum number of units offered, starting price and product cost curve. While Van Horn discloses that a prospective buyer may request a purchase at a current price, no sale is unconditionally consummated at that time as is required by all claims. Rather, any sale is conditioned upon the co-op achieving critical mass. If the co-op never achieves critical mass (which is a very real possibility), the sale is never consummated. Moreover, no sale is consummated as soon as the user requests the immediate purchase at the immediate purchase price as is required by all claims. Instead, the sale is consummated only when (and if) the co-op reaches critical mass. Similarly, while Van Horn discloses that a prospective buyer may request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price, no sale is unconditionally consummated when the user-defined deferred purchase price matches the decreased immediate purchase price as is required by all claims. Rather, any sale is conditioned upon the co-op achieving critical mass.

Thus, the “critical mass” concept is of critical importance to Van Horn, and indeed is one of the central features of the system disclosed in Van Horn.

Applicants respectfully believe that the Examiner is misreading the Van Horn reference, as evidenced by his assertions in Paragraph 8 of the Office Action dated March 29, 2004. The Examiner states that: “The ‘critical mass’ is just affecting the price not the immediate purchase.” Applicants believe that this is completely incorrect. Even in the sections cited by the Examiner, Van Horn discloses that “such offer is included within the pool of offers to be accepted at close of the co-op” (Col. 12, Lines 11-12), that “the decision must be made at 116 to accept the current price, guaranteeing availability once critical mass is achieved, or to make an offer contingent on a lower price range, which may not result in a successful purchase regardless of whether critical mass is achieved” (Col. 11, at Lines 54-59), and that “2. Inventory is allocated to fulfill the order 126 once the co-op closes at 124; 3. The system acknowledges the offer, and indicates to the buyer that his offer is accepted at 130” (Col. 12, lines 24-27).

Thus all actions, including the acceptance of offers, occurs only after the co-op is closed and the required critical mass is met. This is clearly set forth at Column 12, Lines 30-46, where Van Horn specifically states that “A co-op will only close if the required critical mass is met.” Van Horn also discloses that “All offers

meeting the criteria above are accepted and converted to final sales only after the co-op has closed and if the required critical mass is met”.

Applicants respectfully that the above highlighted quotations, as well as the overall teachings of Van Horn as a whole, would make clear to one skilled in the art that the critical mass does indeed affect the immediate purchase. While a buyer's offer may be accepted, and while inventory may be put aside for that buyer, the sale is not consummated until the critical mass is met (which event may never occur). As such, all sales are contingent upon the critical mass being met. Applicants respectfully that this teaching is the complete opposite of what is required by currently pending Claim 1.

For the foregoing reasons, Applicants respectfully submit that all pending claims, namely Claims 1-30, are patentable over the references of record, and earnestly solicit allowance of the same.

Respectfully submitted,



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Amendments to the Drawings:

No amendments to the Drawings are made herein.